

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

VINCENT TURNER,

Petitioner,

vs.

HOWARD SKOLNIK, et al.,

Respondents.

Case No. 3:09-cv-00219-RCJ-RAM

ORDER

The court determined that petitioner had not exhausted his state-court remedies for grounds 1, 2, and 5 of the first amended petition. Order (#91). Currently before the court are petitioner's motion for partial dismissal (#92), respondents' opposition (#93), and petitioner's reply (#94).

Petitioner asks that the dismissal be without prejudice so that he can file a new post-conviction habeas corpus petition in the state district court. Respondents argue that petitioner cannot pursue a state habeas corpus petition and a federal habeas corpus petition at the same time. Nothing prevents petitioner from doing so, as long as the grounds in the federal petition all are exhausted.

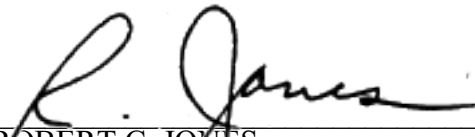
Petitioner also has acknowledged that he might not be able to raise the unexhausted grounds again in this court. Reply, at 2 (#94). Petitioner likely is correct. He faces state-law procedural bars if he files another petition. In this court, petitioner is not seeking a stay pursuant to Rhines v. Weber, 544 U.S. 269 (2005). If he tries later to further amend his petition to re-allege the currently unexhausted grounds, those grounds would be untimely under 28 U.S.C. § 2244(d)(1) because they would not relate back to any earlier-filed petition in this court. King v. Ryan, 564 F.3d 1133, 1141-

1 43 (9th Cir. 2009). Petitioner also likely would face the federal successive-petition bar of 28 U.S.C.
2 § 2244(b). Petitioner should not be misled into thinking that he could pursue the currently
3 unexhausted grounds in this court in the future.

4 IT IS THEREFORE ORDERED that petitioner's motion for partial dismissal (#92) is
5 **GRANTED**. Grounds 1, 2, and 5 of the first amended petition are **DISMISSED** from this action.

6 IT IS FURTHER ORDERED that respondents shall have forty-five (45) days from the date
7 of entry of this order to file and serve an answer, which shall comply with Rule 5 of the Rules
8 Governing Section 2254 Cases in the United States District Courts. Petitioner shall have forty-five
9 (45) days from the date on which the answer is served to file a reply.

10 DATED this 25th day of January, 2016.

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13 ROBERT C. JONES
14 United States District Judge
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